



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
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## MODIFICATION OF FCC COMPARATIVE PROCEEDINGS FREEZE POLICY

On February 25, 1994, the Commission issued a Public Notice<sup>1</sup> announcing a freeze on various aspects of the Commission's processes because of uncertainty concerning what action it would take in response to the United States Court of Appeals' holding in Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993). In Bechtel, the court reversed and remanded the Commission's decision in Anchor Broadcasting Limited Partnership, 7 FCC Rcd 4566(1992), modified, 8 FCC Rcd 1674 (1993), and concluded that the integration criteria that were applied to mutually exclusive applicants in that and other comparative proceedings were arbitrary and capricious.

The Commission has now determined that it will not appeal Bechtel. In light of that decision and in order to permit the continued authorization of broadcast services to the greatest extent possible consistent with Bechtel, we have decided to narrow the scope of the freeze order. Accordingly, effective on the date of this Public Notice, we will resume processing of applications for new AM, FM, and TV stations, applications for upgrades or major modifications of the facilities of such stations, and requests for rulemakings for FM and TV channel allotments. In this connection, we will resume the issuance of AM and TV cut-off lists and the opening of FM filing windows in the same manner as prior to the freeze. We will suspend processing only of those applications that are or become mutually exclusive with other applications. However, if all mutually exclusive applicants submit a settlement proposal, we will take whatever further steps may be appropriate to effectuate the settlement. All applicants should be aware that when processing is precluded because mutually exclusive applications are filed, all applications and application fees will be retained by the Commission until resolution of the issues raised in Bechtel permit the Commission to take further action.

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<sup>1</sup> "FCC Freezes Comparative Proceedings," Public Notice FCC 94-41, February 25, 1994.

Window filing periods that were suspended by the February 25 freeze announcement will be reopened for a full 30-day period by future Public Notice and by publication in the Federal Register. New thirty day filing periods will also be published for previously announced filing windows commencing after the February 25 freeze order. Applications already filed during a suspended filing window will be considered filed in the reopened window.

We reiterate that hearing fee requirements have been suspended. Thus hearing fees due on any date after February 25 should not be submitted. Any party who has submitted a hearing fee due after February 25 may request a refund through the Office of Managing Director.

As an additional matter, we wish to clarify certain aspects of our original public notice. We reaffirm that during the freeze, the Commission, Review Board, and Administrative Law Judges will continue to issue decisions only in cases in which consideration of the applicants' comparative qualifications is unnecessary to resolve the case, and appeals will be entertained only of such decisions. Moreover, procedures involving the filing of pleadings and preparation of decisions involving analysis of applicants' comparative proposals will be held in abeyance. Accordingly, parties to pending comparative proceedings should not file or respond to motions to enlarge the issues, except in those proceedings in which consideration of the applicants' comparative qualifications is unnecessary to resolve the case.

Furthermore, proceedings will not be bifurcated to adjudicate the basic qualifications of some of the applicants, where their disqualification would leave unresolved comparative issues involving other applicants, even if those other applicants contemplate entering into a settlement. If, however, the parties actually file a request for approval of a settlement, which is contingent upon resolution of specified basic qualifying issues, such issues will be adjudicated. In this regard, we reaffirm that during the freeze, although we wish to encourage settlements, limitations on reimbursement and other current policies regarding settlements remain in place.

We also wish to address the impact of the freeze on the status of those orders that have not yet become final and that award construction permits in cases turning on comparative qualifications. Because such orders are subject to reconsideration under revised Commission policy, their effectiveness is stayed. Permittees pursuant to nonfinal orders who have not commenced construction should not do so. Other such permittees who have commenced construction are advised that further construction is at their own risk and that, in any event, they should not incur additional obligations directed toward construction or operation. Where program tests have already commenced, operations may be continued so as not to deprive the public of existing service. However, any application for license to cover a construction permit will be held in abeyance until the issues raised by the Bechtel remand are resolved.

Action by the Commission August 2, 1994. Chairman Hundt, Commissioners Quello, Barrett, Ness and Chong.

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